LEWISTON, THURSDAY, MARCH 6, 2008 AT 8:50 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

WILLIAM H. BREWER, a married man, and ROBERT D. BREWER, a married man,	)	
Plaintiffs-Appellants,	)	
v.	)	
WASHINGTON RSA NO. 8 LIMITED PARTNERSHIP d/b/a INLAND CELLULAR, a Washington corporation,	)	
Defendant-Respondent,	)	
and	)	
MADLYNN KINZER, an unmarried woman, and JOHN BREWER, CLARK COMMUNICATIONS, an Idaho corporation, STATE OF IDAHO, DEPARTMENT OF ADMINISTRATION, a governmental entity, PULLMAN TV CABLE COMPANY, INC., a Washington corporation, PINNACLE TOWERS, INC., a Delaware corporation, LATAH COUNTY, an Idaho governmental entity, AVISTA CORPORATION, a Washington corporation, PAT MACKELVIE d/b/a/ MACKELVIE ADVERTISING, INC., an Idaho corporation, RADIO PALOUSE, INC., a Washington corporation, NORTHWEST MICROWAVE SYSTEM, a Washington corporation, and KEITH RATHBUN d/b/a RATHBUN COMMUNICATIONS,	)	**Docket No. 33642**
Defendants.	)	

Appeal from the District Court of the Second Judicial District, State of Idaho, Latah County. Hon. John R. Stegner, District Judge.

Clark & Feeney, Lewiston, for appellants.

Creason, Moore, Dokken, PLLC, Lewiston, for respondents.

Appellants William and Robert Brewer (the Brewers) are tenants in common with Madlynn Kinzer and others of property located on Moscow Mountain, Latah County, Idaho. The Brewers are Kinzer's nephews. The Brewers each own a collective, undivided one-sixth interest in the property, and Kinzer owns an undivided, one-third interest in the property. Various other family members own the remaining interests.

Since the late 1980s Kinzer has acted as manager of the property. Inland Cellular entered into a lease with Kinzer to use a fifty feet square portion of the property to operate a microwave communication tower. Kinzer retained all of the proceeds from the lease with Inland Cellular as her fee for managing the property.

Subsequently, the Brewers brought this action against Kinzer, the other tenants in common, Inland Cellular, and the other various lease holders for breach of contract, breach of fiduciary duty, constructive fraud, accounting, rescission of leases, and unjust enrichment. Inland Cellular and the defendants moved for summary judgment. The district court granted Inland Cellular's motion as to the Brewers' claim for unjust enrichment and determined that the Brewers were not entitled to rescind the Inland Cellular lease.

The Brewers appeal this decision. They argue that the district court erred in determining that partition was their exclusive remedy; they contend that to allow the lease to continue is at odds with Idaho law on co-tenants and, therefore, they should be able to rescind the lease. Additionally, they assert that the district court incorrectly shifted the burden of proof to them, the non-moving party, on summary judgment.

LEWISTON, THURSDAY, MARCH 6, 2008 AT 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

YVONNE JESSE,	)	
	)	
Plaintiff-Appellant,	)	
	)	**Docket No. 34037**
v.	)	
	)	
TED LINDSLEY,	)	
	)	
Defendant-Respondent.	)	

Appeal from the District Court of the Second Judicial District of the State of Idaho, Idaho County. Hon. John H. Bradbury, District Judge.

Clark & Feeney, Lewiston, for appellant.

Clements, Brown & McNichols, P.A., Lewiston, for respondent.

While walking in the rain to another apartment in her complex, Yvonne Jesse decided to walk in the planting area in order to avoid a considerable amount of water covering the driveway. As she was walking, Jesse stepped in a sinkhole and fell down, sustaining multiple injuries. Jesse sued her landlord, Ted Lindsley, for failing to maintain the premises in a safe condition. Lindsley filed a motion for summary judgment, alleging that an exculpatory clause in the lease absolved him from liability for Jesse's injuries. The district court agreed and granted summary judgment in favor of Lindsley. Jesse appeals to the Idaho Supreme Court, arguing the exculpatory clause is unenforceable because it is against public policy, and that Lindsley is liable on a negligence theory and/or pursuant to Idaho's statutory warranty of habitability.

LEWISTON, THURSDAY, MARCH 6, 2008 at 11:10 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

C SYSTEMS, INC., an Idaho corporation,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	**Docket No. 33233**
	)	
RICHARD MC GEE,	)	
	)	
Defendant-Respondent,	)	
	)	
and	)	
	)	
IMBRIS, INC., an Idaho corporation, KAREN DUNGAN, ANITA NIKIFORUK, A.J. SIMS, JAMES WYM,	)	
	)	
Defendants.	)	

Appeal from the District Court of the First Judicial District of the State of Idaho, Kootenai County. Hon. John T. Mitchell.

Robert E. Covington, Hayden, for appellant.

Witherspoon, Kelley, Davenport & Toole, P.S., Coeur d'Alene, for respondent.

This is an appeal involving a claim by C Systems, Inc. for conversion against Richard McGee. Richard McGee is the former president, director, and shareholder of C Systems, Inc. According to Appellant C Systems, Donald Campbell and McGee formed C Systems, Inc. in 1995. Imbris, Inc. — the company to which McGee allegedly converted C Systems' assets — is a company owned by Karen Dungan, Anita Nikiforuk, A.J. Sims, and James Wyma, individuals. C Systems' claims were under McGee's supervision at the date Imbris, Inc. was formed. The district court granted summary judgment in favor of McGee. Accordingly, C Systems, Inc. appeals to this Court.

LEWISTON, FRIDAY, MARCH 7, 2008 AT 8:50 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

BRIAN JORGENSEN dba MEDICINE MAN PHARMACY and MEDICINE MAN PHARMACY, INC., an Idaho corporation,	)	
Plaintiffs-Respondents-Cross Appellants,	)	
v.	)	
C. MICHAEL COPPEDGE and KAREN COPPEDGE, individually and as the last board of directors and shareholders of Acology Prescription Compounding, Inc., and ACOLOGY PRESCRIPTION COMPOUNDING, INC., a dissolved Idaho corporation,	)	**Docket No. 33964**
Defendants-Appellants-Cross Respondents.	)	

Appeal from the District Court of the First Judicial District of the State of Idaho, Kootenai County. Hon. John T. Mitchell, District Judge. Hon. Lansing Haynes, District Judge.

Dean & Kolts, Coeur d'Alene, for Plaintiffs-Respondents-Cross Appellants.

James, Vernon & Weeks, Coeur d'Alene, for Defendants-Appellants-Cross Respondents.

Brian Jorgensen, d.b.a. Medicine Man Pharmacy (Jorgensen) entered into an agreement for the sale of its Coeur D'Alene compounding division to C. Michael Coppedge, Karen Coppedge, and Acology Prescription Compounding, Inc. (Coppedges). In its complaint, Jorgensen claimed the Coppedges had breached the sales agreement. The Coppedges counterclaimed, raising an affirmative defense that the contract contained an unenforceable covenant not to compete. The district court ruled the covenant was enforceable, and the jury returned a verdict of $68,754 for Jorgensen.

The Coppedges timely appealed, arguing the court erred in holding the covenant was enforceable and in granting a new trial. Jorgensen cross-appealed, challenging Jury Instruction No. 25 related to partnerships.

LEWISTON, FRIDAY, MARCH 7, 2008 AT 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

DENNIS LYLE AKERS and SHERRIE L. AKERS, husband and wife,	)	
Plaintiffs-Respondents,	)	
v.	)	
VERNON J. MORTENSEN and MARTI E. MORTENSEN, husband and wife,	)	
Defendants-Appellants,	)	
and	)	
D.L. WHITE CONSTRUCTION, INC., DAVID L. WHITE and MICHELLE V. WHITE, husband and wife,	)	**Docket Nos. 33587/33694**
Defendants.	)	
DENNIS LYLE AKERS and SHERRIE L. AKERS, husband and wife,	)	
Plaintiffs-Respondents,	)	
v.	)	
D.L. WHITE CONSTRUCTION, INC., DAVID L. WHITE and MICHELLE V. WHITE, husband and wife,	)	
Defendants-Appellants,	)	
and	)	
VERNON J. MORTENSEN and MARTI E. MORTENSEN, husband and wife,	)	
Defendants.	)	

Appeal from the District Court of the First Judicial District of the State of Idaho, Kootenai County. Honorable John T. Mitchell, District Judge.

Givens Pursley, LLP, Boise, for appellants Mortensen.

Robert Covington, Hayden, for appellants White.

James, Vernon & Weeks, P.A., Coeur d'Alene, for respondents.

This case arises from a bitter easement dispute between adjoining landowners. Appellants Vernon and Marti Mortensen, David and Michelle White, and D.L. White Construction own real property adjacent to land owned by Respondents, Dennis and Sherrie Akers. Appellants plan to subdivide their land into smaller lots and create a housing development. In order to accommodate their projected housing development, the Appellants planned to widen an access road that crossed the Akers' property and connected the Appellants' land to a county road. Appellants commenced work on the widening project and the Akers filed this lawsuit in response. The Akers argue that the Appellants' easement across their property is limited to a width of 12.2 feet. Appellants argue they are entitled to an easement at least 25 feet in width.

The district court initially found that the Appellants had an express easement 12.2 feet in width across most, but not all, of the Akers' property. That decision was appealed to the Idaho Supreme Court in *Akers v. D.L. White Constr., Inc.*, 142 Idaho 293, 127 P.3d 196 (2005). In that case, the Idaho Supreme Court remanded the case to the district court to determine whether the Appellants had an easement implied by prior use or a prescriptive easement across the Akers' property, vacated the district court's award of punitive damages against the Appellants, and vacated the award of damages to the Akers for trespass and negligent infliction of emotional distress.

On remand, the district court determined that the Appellants had a prescriptive easement that was 12.2 feet in width across the entire length of the Akers' property. The district court found that the Appellants were liable to the Akers for trespass damages for widening the easement beyond 12.2 feet. The district court also granted an award of punitive damages against the Appellants and awarded Michelle Akers damages for emotional distress. The Akers were also awarded their costs and attorney fees.

On appeal, the Appellants assert that: (1) the findings of fact and conclusions of law within the district court's order on remand do not comply with I.R.C.P. 52(a); (2) the district court erred when it found that the Appellants do not have an easement by implication across the Akers' property; (3) the district court erred when it found that the scope of the Appellants' prescriptive easement across the Akers' property was limited to a width of 12.2 feet; (4) the district court erred by awarding punitive damages against the Appellants and by awarding the Akers damages based upon trespass and negligent infliction of emotional distress; and (5) the district court erred when it awarded the Akers attorney fees and costs below.

BOISE, MONDAY, MARCH 10, 2008 AT 8:50 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

MARY C. CURLEE,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	**Docket No. 34460**
	)	
KOOTENAI COUNTY FIRE & RESCUE,	)	
	)	
Defendant-Respondent.	)	

Appeal from the District Court of the First Judicial District of the State of Idaho, Kootenai County. Honorable John T. Mitchell, District Judge.

Rude, Jackson & Daugharty, LLP, Coeur d'Alene, for appellant.

Ramsden & Lyons, Coeur d'Alene, for respondent.

Appellant Mary C. Curlee (Curlee), a former employee of Respondent Kootenai County Fire and Rescue (KCFR), was discharged on October 13, 2004, after her notes detailing the minute-by-minute activities of two of her co-workers, to whom she assigned the fictitious names "Muffy" and "Buffy," were discovered on her desk. Curlee filed a complaint against KCFR alleging that she was fired in violation of the Idaho Protection of Public Employees Act since her notes were a documentation of a waste of public funds, manpower, or resources. KCFR argued in response that Curlee was fired not for her "documentation of waste," but rather, her unwillingness to work cooperatively with her coworkers. The district court entered an order granting summary judgment in favor of KCFR from which Curlee appealed. The matter was heard by the Court of Appeals in which the district court's grant of summary judgment was affirmed in a 2:1 decision. This Court granted review *sua sponte*.

BOISE, MONDAY, MARCH 10, 2008 AT 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

MELISSA HEI, a single person, **Plaintiff-Appellant-Cross Respondent,** **and** **MICHAEL HEI and COLLEEN HEI, husband and wife,** **Plaintiffs,** **v.** **MARK HOLZER and LISA HOLZER, husband and wife; JOINT SCHOOL DISTRICT NO. 391, a political subdivision of the State of Idaho; JOHN DOES 1-5, in their capacity as Board Members of Joint School District NO. 391,** **Defendants,** **and** **JOINT SCHOOL DISTRICT NO. 391; a Political Subdivision of the State of Idaho; LARRY L. CURRY, in his capacity as Superintendent of Joint School District No. 391; LARRY WIER, in his capacity as Principal of Kellogg High School,** **Defendants-Respondents-Cross Appellants.**	)	**Docket No. 32211**

Appeal from the District Court of the First Judicial District of the State of Idaho, Shoshone County. Hon. John T. Mitchell, District Judge.

Rude, Jackson & Daugharty, Coeur d'Alene, for appellant.

Anderson, Julian & Hull, LLP, Boise, for respondent.

When Melissa Hei was an eighteen-year-old junior in high school, she entered a consensual sexual relationship with Mark Holzer, her teacher and basketball coach. The two kept their relationship secret for several months, but the high school's administrators and personnel eventually discovered the relationship. Holzer resigned from his job at the end of the school year and received a two year suspension of his teaching license. Hei continued with her education, completing her senior year at the same high school and then moving on to college. A year after the relationship ended, Hei and her parents filed suit against Holzer and his wife, along with the principal of her high school, the school district, and its superintendant. The complaint alleged seventeen causes of action, all of which were dismissed on summary judgment. Hei appealed to this Court, which remanded the case for trial on the issue of a Title IX claim and the issue of whether the school district could be found liable for negligent supervision. A jury found the school district liable for negligent supervision, but awarded Hei zero damages. The trial court dismissed all of Hei's post-trial motions seeking alteration in the damage award. She timely appealed to this Court.

BOISE, MONDAY, MARCH 10, 2008 AT 11:10 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

LONNIE G. PARTOUT,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	
	)	
RON HARPER,	)	
	)	
Defendant-Respondent,	)	**Docket No. 33979**
	)	
and	)	
	)	
ADAMS COUNTY REAL STATE (ACRE), INC., an Idaho corporation; F. FRED GLESMER; CLAUDIA J. THOMAS; and ERNEST BREUER,	)	
	)	
Defendants.	)	

Appeal from the District Court of the Third Judicial District, State of Idaho, Adams County. Hon. Stephen W. Drescher, District Judge.

Belnap, Curtin, Williams & Purnell, PLLC, Boise, for appellant.

Howard, Lopez & Kelly PLLC, Boise, for respondent.

Appellant Lonnie Partout purchased a home in 2001. The U.S. Department of Veterans Affairs (VA) guaranteed the loan financing Partout's purchase of the home. Before the VA guaranteed the loan it requested Respondent Ron Harper perform an appraisal of the property. Subsequent to his purchase of the house, Partout discovered structural defects in his home.

Partout sued several people including Harper. As to Harper, Partout alleged breach of contract, breach of the Idaho Consumer Protection Act, and fraud/misrepresentation. Harper moved for summary judgment which the district court granted on the first claim only. Harper then moved the court to reconsider and the district court granted summary judgment for Harper on all of the claims and awarded him attorney fees. Partout appeals, arguing he was a third-party beneficiary to the contract between Harper and the VA and he did not make a judicial admission precluding him from asserting the element of reliance in his fraud/misrepresentation claims. Additionally, Partout contends the district court erred in granting Harper attorney fees.

BOISE, WEDNESDAY, MARCH 12, 2008 at 8:50 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

TAMARA L. O'CONNOR,	)	
	)	
Plaintiff-Appellant,	)	**Docket No. 33685**
	)	
v.	)	
	)	
HARGER CONSTRUCTION, INC., an Idaho corporation,	)	
	)	
	)	
Defendant-Respondent.	)	

Appeal from the District Court of the First Judicial District of the State of Idaho, Kootenai County. Hon. Charles Hosack.

Layman, Layman & Robinson, PLLP, Coeur d'Alene, for appellant.

Dean & Kolts, Coeur d'Alene, for respondent.

This action arises out of the purchase of real property on Lake Coeur d'Alene, Idaho. Tamera O'Connor (O'Connor) filed an action against Harger Construction, Inc., alleging breach of contract and seeking damages, specific performance or the return of her deposit. The district court, Honorable Charles Hosack presiding, found that a mutual mistake of fact existed between O'Connor and Harger and the contract was rescinded. The court further found that O'Connor had not met the burden of proving that Harger had breached the original contract. On motion for reconsideration, the trial court expressly ordered the contract rescinded and O'Connor's deposit returned less an amount for construction materials in her possession. O'Connor appeals to this Court.

BOISE, WEDNESDAY, MARCH 12, 20088 AT 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	**Docket No. 33617/33618**
	)	
DAVID PRUSS,	)	
	)	
Defendant-Respondent.	)	

Appeal from the District Court of the Second Judicial District of the State of Idaho, Clearwater County. Honorable John H. Bradbury, District Judge.

Hon. Lawrence G. Wasden, Attorney General, Boise, for appellant.

Molly J. Huskey, State Appellate Public Defender, Boise, for respondent.

The State appeals from the district court's order granting Defendant David Pruss's (Pruss) motion to suppress evidence seized by law enforcement from the small, camouflaged, makeshift, possibly booby-trapped "hooch" Pruss occupied on forest land he did not own.

In the summer of 2005, the Clearwater Country Sheriff's Department was investigating a string of incidents in the Weippe area involving damage to logging equipment and utility infrastructure, which was mostly carried out with the use of a high velocity rifle. Occurring in the same time period and vicinity was a string of thefts at local residences and businesses. Oddly enough, nothing had been stolen from these various locations other than food, "survival type" items, first aid supplies, and coffee. Information received from and corroborated by two confidential informants led law enforcement to believe that David Pruss was responsible for the break-ins and property damage. The informants told law enforcement that Pruss was living in a hooch in the forest near Weippe, that he was a heavily-armed radical survivalist that had ties to extremist groups, and that he harbored a violent attitude towards law enforcement and was shooting the power grid in order to lure officers into an ambush. Based on this information, the Sheriff's Department obtained a warrant for Pruss's arrest.

In an effort to locate Pruss, law enforcement placed a transmitter in a coffee can at a home that had been burglarized at least two times that summer. The bait was taken and law enforcement tracked the transmitter to a steep, heavily-wooded ravine adjacent to a logging site. Suspecting that the transmitter had been brought to Pruss's hooch, the Sheriff's office organized a team of about a dozen officers to arrest Pruss in the ravine at first light. When officers located the hooch (a one-man tent covered with a small door-less structure made of sticks, branches, tarps, and twine) they announced their presence and called Pruss out. After Pruss failed to

respond, officers deployed CS gas into the hooch. When Pruss's arm and leg became visible at the front of his tent, the lead officer approached, kicked Pruss in the shoulder, and pinned him to the ground with his foot and shotgun. Pruss was lying half-in/half-out of the hooch/tent when he was handcuffed. At that moment, Pruss's assault rifle and the coffee can with the transmitter were lying next to Pruss in plain view at the front of his tent.

While some of the officers stayed at the hooch, the lead officer and others escorted Pruss at gunpoint via ATV to a waiting squad car which in turn took him directly to the station. The lead officer returned to the hooch on one of the ATVs. Upon his return to the hooch, the evidence (including the assault rifle and coffee can with the transmitter) was seized, photographed, and inventoried, and the hooch was dismantled. Law enforcement did not have a search warrant.

Pruss's criminal complaint alleged 11 counts of felony burglary, 10 counts of felony malicious injury to property, 10 counts of misdemeanor petit theft, and 4 counts of misdemeanor malicious injury to property. Pruss moved to suppress the evidence seized from his hooch arguing that it was his home and that the seizure of the evidence violated his Fourth Amendment privacy right to be free from unreasonable searches and seizures in his home. The district court granted Pruss's motion and suppressed all evidence seized from the hooch. The State appealed.

BOISE, WEDNESDAY, MARCH 12, 2008 AT 11:10 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

GILTNER DAIRY, LLC, an Idaho limited liability company,	)	
Petitioner-Appellant,	)	
v.	)	
JEROME COUNTY, a political subdivision of the State of Idaho,	)	**Docket No. 34020**
Respondent,	)	
and	)	
93 GOLF RANCH, L.L.C.,	)	
Intervenor-Respondent.	)	

Appeal from the District Court of the Fifth Judicial District of the State of Idaho, Jerome County. Hon. John K. Butler, District Judge.

White Peterson, P.A., Nampa, for Petitioner-Appellant.

Michael J. Seib, Jerome, for Respondent.

Robertson & Slette, PLLC, Twin Falls, for Intervenor-Respondent.

Giltner Dairy, LLC (Giltner) appeals the Jerome Board of County Commissioners' (the Board) *Memorandum Decision* and the district court's subsequent *Memorandum Decision on Judicial Review*, on grounds that the Board's decision was erroneous; not supported by substantial, competent evidence; and prejudiced substantial rights of Giltner.

On November 4, 2005, the 93 Golf Ranch, LLC (Golf Ranch) applied to the Jerome County Planning and Zoning Commission (P&Z) for an amendment to the county's comprehensive plan that would change the land described in its application from A-1 Agricultural (A-1) to A-2 Agricultural Residential (A-2). On December 9, 2005, the P&Z

recommended that the Board deny the proposed change; the Board, however, approved the amendment on February 27, 2006, noting that it was only a plan change and not a zoning change.

On March 24, 2006, Giltner petitioned the district court for judicial review of the Board's decision, arguing that it should be reversed. The district court dismissed Giltner's petition for judicial review, holding that because the land hadn't been rezoned and because there wasn't an application for a rezone of the property, the amendment to the future land use map of the county's comprehensive plan had not prejudiced Giltner's rights.

On March 16, 2007, Giltner timely appealed. On July 9, 2007, this Court granted Golf Ranch's petition to intervene in the appeal.

BOISE, FRIDAY, MARCH 14, 2008 AT 8:50 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

EXCELL CONSTRUCTION INC.,	)	
	)	
Employer-Appellant,	)	
	)	
v.	)	**Docket No. 33574**
	)	
IDAHO DEPARTMENT OF COMMERCE AND LABOR,	)	
	)	
Respondent.	)	

Appeal from the Industrial Commission of the State of Idaho.

Wetzel & Wetzel, Coeur d'Alene, for appellant.

Hon. Lawrence G. Wasden, Attorney General, Boise, for respondent.

Excell Construction Inc. (Excell) appeals a ruling by the Idaho Industrial Commission finding Excell liable for unpaid unemployment insurance taxes. The Industrial Commission determined that Excell mischaracterized many employees engaged in covered employment as "independent contractors," resulting in Excell's alleged underpayment of unemployment insurance.

Excell is in the business of selling and installing sheetrock. As part of its business, Excell pays "hangers" to cut and install the sheetrock and "tapers" to make the sheetrock appear seamless. Excell categorizes some of the hangers and tapers as employees. Most of the hangers and tapers are categorized by Excell as independent contractors. In March 2001, the Idaho Department of Commerce and Labor (IDCL) conducted a compliance audit of Excell. Following the audit, the IDCL issued a status determination concluding that the hangers and tapers categorized by Excell as independent contractors had performed services in covered employment and were therefore taxable for unemployment insurance purposes.

Excell appealed the status determination to an IDCL appeals examiner. The appeals examiner upheld IDCL's status determination. Excell subsequently appealed to the Industrial Commission, which affirmed the appeals examiner's decision. Excell then appealed the Industrial Commission's decision to the Idaho Supreme Court. In its decision dated June 21, 2005, the Supreme Court ruled that the Industrial Commission erred in finding that Excell controlled how the hangers and tapers performed their work. The Supreme Court remanded the case to the Industrial Commission for further proceedings to determine whether the hangers and tapers were engaged in an independently established trade, occupation, profession, or business.

On remand, the IDCL appeals examiner conducted additional hearings and determined that the hangers and tapers were not engaged in independently established trades or businesses during the audit period. The appeals examiner concluded that Excell's payments to the hangers and tapers were subject to unemployment insurance taxes. Excell appealed the decision of the appeals examiner to the Industrial Commission. After the Industrial Commission affirmed the decision of the appeals examiner, Excell appealed to the Idaho Supreme Court a second time.

Excell brings this appeal arguing that the Industrial Commission incorrectly applied the facts to the law. Excell also argues that the Industrial Commission's findings concerning employment status are not supported by substantial and competent evidence.

The Industrial Commission rejects Excell's arguments, and claims that Excell's payments to the hangers and tapers were wages for services rendered in covered employment, and therefore subject to unemployment insurance taxes.

BOISE, FRIDAY, MARCH 14, 2008 AT 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

IN THE MATTER OF THE HOSPITALIZATION OF DANIEL W.	)	
BONNER COUNTY, a political subdivision of the State of Idaho, acting through the COUNTY BOARD OF COMMISSIONERS,	)	
Appellant-Appellant on Appeal-Cross-Respondent,	)	**Docket No. 33557**
v.	)	
KOOTENAI HOSPITAL DISTRICT,	)	
Intervener-Respondent on Appeal-Cross Appellant.	)	

Appeal from the District Court of the First Judicial District of the State of Idaho, for Bonner County. Hon. Steven C. Verby, District Judge.

Louis E. Marshall, III, Bonner County Prosecutor's Office, Sandpoint, for appellant.

Paine Hamblen, LLP, Coeur d'Alene, for respondent.

After a Bonner County sheriff took Daniel W. into protective custody, a magistrate judge held a commitment hearing and entered an order of commitment vesting custody of Daniel W. to the Idaho Department of Health and Welfare. At the same hearing, the magistrate judge found that Daniel W. was indigent, and held Bonner County responsible for the costs of his precommitment care. Bonner County appealed to the district court, arguing the magistrate lacked authority to hold the county responsible for costs, and that she lacked sufficient information to make this assessment at a commitment hearing. Kootenai County Hospital District intervened, arguing the magistrate acted appropriately, and had the authority to make the determination based on I.C. § 66-327(a), which directs the court to "consider" such person's indigency and, if indigent, fix responsibility "for payment of such costs on the county of such person's residence to the extent not paid by such person or not covered by third party resources." The district court reversed the magistrate's decision regarding costs because the magistrate did

not consider certain provisions of the law in making her determination. Both parties have appealed to the Supreme Court.